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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 GLEND A H.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C18-6034 BAT

**ORDER REVERSING THE
COMMISSIONER'S FINAL DECISION
AND REMANDING FOR FURTHER
PROCEEDINGS**

13 Plaintiff appeals the ALJ's decision finding her not disabled. The ALJ found
14 degenerative joint/disc disease and status post bilateral carpal tunnel release are severe
15 impairments; plaintiff has the RFC to perform light work limited to occasional climbing and
16 overhead reaching; and plaintiff is not disabled because she can perform past work.

17 Plaintiff contends the ALJ harmfully erred by failing to find she has a severe mental
18 impairment at step two and by discounting her testimony about the severity of her limitations.
19 For the reasons below, the Court **REVERSES** the Commissioner's final decision and
20 **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. §
21 405(g).

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1 **A. The ALJ's Step Two Determination**

2 At step two the ALJ found plaintiff's "depressive disorder" was medically determinable
3 but not severe. Tr. 18. Plaintiff correctly contends the ALJ erred. The ALJ gave great weight to
4 the opinions of examining Dr. Yun-Ju Cheng, Ph.D., who opined, among other things, plaintiff
5 may have "difficulty with working memory," reports difficulty with sustaining attention and
6 concentration," and appeared to have some difficulty dealing with stress and adapting to
7 change." Tr. 453. The ALJ is required to discuss these limitations or give specific and legitimate
8 or clear and convincing reasons to reject them. This is because in determining a claimant's RFC,
9 an ALJ must assess all the relevant evidence, including medical reports and descriptions of
10 limitation, to determine what capacity the claimant has for work. *See* 20 C.F.R. § 416.945(a).
11 The ALJ failed to do so and accordingly erred.

12 Plaintiff also presented to the Appeals Council the evaluation of examining doctor Dan
13 Neims, Psy.D. Dr. Neims opined plaintiff was moderately limited in her ability to perform work
14 within schedule, maintain attendance, be punctual, adapt to routine changes, make simple work
15 related decisions, communicate effectively, maintain appropriate behavior, complete a normal
16 workday or set realistic goals. Tr. 120. Dr. Neims' opinion undermines the ALJ's determination
17 that plaintiff's mental conditions are not severe; accordingly, the matter must be remanded for
18 further proceedings. *See e.g. Ramirez v. Shalala*, 8 F.3d 1449,1451-52 (9th Cir. 1993) (Court
19 may consider new evidence submitted to the Appeals Council in determining whether the ALJ's
20 decision is supported by substantial evidence).

21 In short, for the reasons above the Court concludes the ALJ harmfully erred by failing to
22 properly assess plaintiff's mental health limitations on her ability to perform gainful work
23 activity and that the matter must be remanded for further proceedings.

1 **B. Plaintiff's Testimony**

2 The ALJ rejected plaintiff's testimony about how her carpal tunnel syndrome caused
3 hand pain and cramping and how the condition also limited her ability to hold items for long
4 periods of time. The ALJ rejected her testimony on the grounds plaintiff can prepare meals, do
5 some house work, drive a car, shop, babysit, do laundry and clean the house. The ALJ erred.
6 These activities do not contradict plaintiff's testimony because plaintiff did not claim she had no
7 use of her hands. Rather she claimed she was limited in the use of hands, and such a limitation
8 would not preclude the activities above.

9 The ALJ also rejected plaintiff's testimony as contradicted by her treatment records
10 regarding her neck, normal gait, range of wrist movement and moderate grip strength. The ALJ
11 presents no explanation of a logical connection between plaintiff's neck and gait and her carpal
12 tunnel symptoms. Plaintiff testified she suffers pain and cramping in the hands, not that she
13 could was unable to move her wrists or that her grip strength was inadequate. The medical
14 records the ALJ referenced thus do not contradict plaintiff's testimony.

15 Accordingly, the ALJ failed to give clear and convincing reasons supported by
16 substantial evidence to reject plaintiff's testimony. The failure is harmful because the ALJ's
17 complete rejection of plaintiff's testimony resulted in a RFC determination that omitted any
18 mention of limitations related to plaintiff's hands. Instead the ALJ found plaintiff could perform
19 past relevant work as a bartender, retail clerk and casino worker which are jobs that would seem
20 to require little to no limitations with the use of the workers hands.

21 **CONCLUSION**

22 The Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter
23 for further administrative proceedings under sentence four of 42 U.S.C. § 405(g). On remand the

1 ALJ shall reassess the opinions of Drs. Cheng and Neims, reassess plaintiff's testimony, develop
2 the record and redetermine plaintiff's RFC as necessary, and proceed to steps four and five as
3 appropriate.

4 DATED this 14th day of May, 2019.

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7 BRIAN A. TSUCHIDA
Chief United States Magistrate Judge